

To House Judiciary Committee
From Rick Jore, Ronan MT
Representing himself, his family, and MT Pro-Life Coalition

Regarding SB 406

March 18, 2009

Members of the House Judiciary Committee,

Thank you for your attention and consideration of SB 406. As a board member of MT Pro-Life Coalition, I rise to strongly support this bill and express my sincere gratitude to Sen. McGee for sponsoring it.

When issuing the majority opinion in Roe V. Wade in 1973, Justice Harry Blackmun said "[If the] suggestion of personhood [for the unborn] is established, the [abortion rights] case, of course, collapses, for the fetus' right to life is then guaranteed specifically by the [14th] Amendment."

By defining "person" in the MT Constitution as "a human being at all stages of human development of life, including the state of fertilization or conception, regardless of age, health, level of functioning, or condition of dependency," SB 406, if submitted to and passed by the voters of Montana, would grant to unborn children protection under the "due process" clause in Art. II Sec. 17 of the Montana Constitution.

Obviously, then, SB 406 directly challenges the central holding of Roe V. Wade which, of course, did not hold that an unborn child is a person.

I submit to you that SB 406 not only challenges Roe V. Wade as being wrongly decided, but it also challenges the notion that Roe V. Wade is the "law of the land," as it often is called. Neither the US Constitution nor the MT Constitution authorizes the judicial branch of government to make law.

Too often our state legislatures have conceded authority to the federal government, especially the federal courts, which it simply does not have insofar as granted by the US Constitution. I have attached to my written testimony information regarding this misunderstanding (at least in my view and in the view of Thomas Jefferson) of what has become known as "Judicial Review" that has morphed into a *de facto* "judicial supremacy." I will do my best to answer any questions regarding that position should the Committee have any.

In anticipation of arguments against SB 406, please let me say with all sincerity, and I am confident that I speak for every supporter of this bill who is here today, that we do not view pregnant women as "second class citizens" nor do we desire to be uncompassionate to those who may have "unwanted", "unplanned", or "troubled" pregnancies. However, with equal sincerity, I must say that the status of "equal class citizen" and equal compassion must be afforded unborn, innocent children.

The Dred Scott decision handed down by the US Supreme Court in 1857 declared that slaves were "chattel" or private property. I think we would all agree that viewed through the mist of history, that had a state legislature been courageous enough to initiate an amendment to their state constitution directly challenging the Dred Scott decision, it would be viewed as a "heroic" in our day. I submit that by passing SB 406, history will view this legislature in the same favorable light.

Thomas Jefferson on Politics & Government

18. Judicial Review

Who should make the final decision on interpreting the Constitution? The Supreme Court in the case of *Marbury v. Madison*, which was decided during the first term of President Thomas Jefferson, determined that IT should make the final decision for all branches of government, and that opinion has remained in force ever since. Jefferson, however, strongly opposed Judicial Review because he thought it violated the principle of separation of powers. He proposed that each branch of government decide constitutional questions for itself, only being responsible for their decisions to the voters.

"To consider the judges as the ultimate arbiters of all constitutional questions [is] a very dangerous doctrine indeed, and one which would place us under the despotism of an oligarchy. Our judges are as honest as other men and not more so. They have with others the same passions for party, for power, and the privilege of their corps. Their maxim is *boni judicis est ampliare jurisdictionem* [good justice is broad jurisdiction], and their power the more dangerous as they are in office for life and not responsible, as the other functionaries are, to the elective control. The Constitution has erected no such single tribunal, knowing that to whatever hands confided, with the corruptions of time and party, its members would become despots. It has more wisely made all the departments co-equal and co-sovereign within themselves." --Thomas Jefferson to William C. Jarvis, 1820. ME 15:277

✕ "There is another opinion entertained by some men of such judgment and information as to lessen my confidence in my own. That is, that the Legislature alone is the exclusive expounder of the sense of the Constitution in every part of it whatever. And they allege in its support that this branch has authority to impeach and punish a member of either of the others acting contrary to its declaration of the sense of the Constitution. It may, indeed, be answered that an act may still be valid although the party is punished for it, right or wrong. However, this opinion which ascribes exclusive exposition to the Legislature merits respect for its safety, there being in the body of the nation a control over them which, if expressed by rejection on the subsequent exercise of their elective franchise, enlists public opinion against their exposition and encourages a judge or executive on a future occasion to adhere to their former opinion. Between these two doctrines, every one has a right to choose, and I know of no third meriting any respect." --Thomas Jefferson to W. H. Torrance, 1815. ME 14:305

"[How] to check these unconstitutional invasions of... rights by the Federal judiciary? Not by impeachment in the first instance, but by a strong protestation of both houses of Congress that such and such doctrines advanced by the Supreme Court are contrary to the Constitution; and if afterwards they relapse into the same heresies, impeach and set the whole adrift. For what was the government divided into three branches, but that each should watch over the others and oppose their usurpations?" -- Thomas Jefferson to Nathaniel Macon, 1821. (*) FE 10:192